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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,851	09/19/2003	Peter Bodine	AHP98134 P1	6790

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EXAMINER	
XIE, XIAOZHEN	
ART UNIT	PAPER NUMBER
1646	
MAIL DATE	DELIVERY MODE
03/19/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/666,851	BODINE, PETER	
	Examiner	Art Unit	
	XIAOZHEN XIE	1646	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *6* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *05 February 2009*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-4,6,20,21 and 25*.
   Claim(s) withdrawn from consideration: *7-19 and 26-43*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Gary B. Nickol /
Supervisory Patent Examiner, Art Unit 1646

Continuation of 11. does NOT place the application in condition for allowance because:

Claims 1-4, 6, 20 and 21 remain rejected under 35 U.S.C. § 112, first paragraph, as lacking full enablement for reasons set forth in the previous office action. Applicant argues that the claims are directed to antibodies generated using a secreted frizzled related protein-1 (sFRP-1) of SEQ ID NO:2 as an immunogen, which do not encompass antibodies generated using any portions or fragments of sFRP-1. Applicants' argument has been fully considered but has not been found to be persuasive. The claim language "an antibody generated using a sFRP-1 of SEQ ID NO:2 as an immunogen" encompasses antibodies using a portion or fragment of sFRP-1 of SEQ ID NO:2 as an immunogen, and does not require the entire sequence to be present. The specification does not provide sufficient support that antibodies generated using any portion or fragment of the sFRP-1 protein exhibit the recited functional activity. Amending the claim to "using the sFRP-1 of SEQ ID NO:2 as an immunogen" would obviate the rejection.

claims 20 and 21 remain rejected under 35 U.S.C. 102(e) as being anticipated by Umansky et al. (US 6,433,155 B1), for reasons of record set forth in the previous office actions. Applicant argues that the instant claims are directed to antibodies generated by the full length sFRP protein of SEQ ID NO: 2, and the SAPR-2 (sFRP-1) of Umansky shares 99.7% similarity to the instant sFRP protein of SEQ ID NO:2, therefore, each of the elements of the present claims is not present in Umansky. Applicants' argument has been fully considered but has not been found to be persuasive. First, the claims still read on antibodies generated using a portion or fragment of sFRP-1 (see supra). Second, because of the similarity between the SAPR-2 of Umansky and the instant sFRP-1 (99.7% identity), one of ordinary skill in the art would recognize that a substantial population of the antibodies encompassed by the prior art would be identical to the instant antibodies.

claims 20 and 21 remain rejected under 35 U.S.C. 102(e) as being anticipated by Rubin et al. (US 6,479,255 B1), for reasons of record set forth in the previous office action. Applicant argues that Rubin does not expressly teach pharmaceutical compositions comprising antibodies generated by the sFRP protein of SEQ ID NO:2, as presently claimed, therefore, rejection of the present claims as being anticipated by Rubin is improper. Applicants' argument has been fully considered but has not been found to be persuasive. The presently claimed antibodies are generated by "a sFRP protien of SEQ ID NO: 2", not by "the sFRP protein of SEQ ID NO: 2". Further,because of the similarity between the FRP polypeptide of Rubin and the instant sFRP-1 (96.5% identity), one of ordinary skill in the art would recognize that a substantial population of the antibodies encompassed by the prior art would be identical to the instant antibodies.

claims 1, 3, 4, 6, 20, 21 and 25 remain rejected under 35 U.S.C. 102(e) as being anticipated by Rubin et al. (US 2003/0175864 A1) for reasons of record set forth in the previous office action. Applicant argues that the paragraph [0090] in Rubin does not cite the FRP amino acid sequences, and it is unclear where a sequence having 100% similarity to SEQ ID NO: 2 is disclosed. It was clearly set forth in the office action (mailed 15 April 2008) that paragraph [0090] of Rubin discloses antibodies raised against full-length recombinant FRP polypeptide. The sequence aligment of the FRP polypeptide with SEQ ID NO: 2 was provided along with the office action.

Claim 2 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Rubin et al. (US 2003/0175864 A1), in view of Chan et al. (J. Biol. Chem., 1992, 267(35):25202-25207), for reasons of record set forth in the previous office action.